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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8
9 UNITED STATES OF AMERICA,

Case No. 3:20-cr-00009-HDM-CLB

10 v. Plaintiff,

ORDER

11 WILLIAM PHILLIP NEIDINGER, a/k/a
12 WILLIAM JOSEPH BECK, III,

13 Defendant.

14 Before the court is the defendant's "Petition for
15 Reconsideration of Retrial as Second Jeopardy" (ECF No. 75). The
16 government has opposed (ECF No. 77), and the defendant has replied
17 (ECF No. 79).

18 On April 22, 2021, the court declared a mistrial after the
19 jury advised that it was hopelessly deadlocked. Retrial was set
20 for September 20, 2021. The defendant now moves to preclude retrial
21 and dismiss this action on Double Jeopardy grounds.

22 Double jeopardy does not bar a second trial where a mistrial
23 was declared on the basis of "manifest necessity." *United States*
24 *v. Perez*, 22 U.S. 579, 580 (1824); *Logan v. United States*, 144
25 U.S. 263, 297-98 (1892), abrogated on other grounds by *Witherspoon*
26 *v. State of Ill.*, 391 U.S. 510 (1968). "Jury deadlock is a classic
27 example of manifest necessity for a mistrial." *Rogers v. United*
28 *States*, 609 F.2d 1315, 1317 (9th Cir. 1979). "[W]hether the

1 discharge of the jury [is] manifestly necessary in order to prevent
2 a defeat of the ends of public justice . . . [is] a question to be
3 finally decided by the presiding judge in the sound exercise of
4 his discretion." *Logan*, 144 U.S. at 298. The "trial judge's
5 decision to declare a mistrial when he considers the jury
6 deadlocked is ... accorded great deference by a reviewing court.'" "
7 *Renico v. Lett*, 559 U.S. 766, 774 (2010).

8 In the Ninth Circuit, trial courts are to consider the
9 following factors in deciding whether a jury deadlock amounts to
10 manifest necessity for a mistrial: (1) the jury's collective
11 opinion that it cannot agree; (2) the length of the trial and
12 complexity of the issues; (3) the length of time the jury has
13 deliberated; (4) whether the defendant has made a timely objection
14 to the mistrial; and (5) the effects of exhaustion or coercion on
15 the jury. *Rogers v. United States*, 609 F.2d 1315, 1317 (9th Cir.
16 1979). "The crucial factor is the jury's statement that it cannot
17 agree." *Id.* "Therefore, the "judge should question the jury in
18 such circumstances, either individually or through its foreman, on
19 the possibility that its current deadlock could be overcome by
20 further deliberations." *Id.*

21 Here, trial proceedings following jury selection ran just
22 over a day. The jury deliberated for about four-and-a-half hours
23 before sending its first note indicating it could not reach a
24 verdict. Before bringing the jury in, the court discussed the note
25 with the parties. The defendant opposed the giving of an *Allen*
26 charge and favored immediate declaration of a mistrial; the
27 government asked for an *Allen* charge. Ultimately, the court gave
28 the *Allen* charge and asked the jury to continue their

1 deliberations. After two-and-a-half hours of continued
2 deliberations, the jury returned a second note stating that a
3 unanimous verdict could not be reached. The court in response asked
4 both the jury foreman and each individual juror whether they
5 believed continued deliberations could result in a verdict. All
6 confirmed that they did not believe a verdict could be reached. As
7 the jury was hopelessly deadlocked, the court declared a mistrial.

8 The critical factor - the jury's own words that it could not
9 reach a verdict - is met here. The jury advised the court twice
10 that it could not reach a verdict and each individual juror
11 confirmed as much. While the jury deliberated for just under eight
12 hours, the trial was only a few hours longer than that, and the
13 case was not complicated. There is no indication that the jury was
14 affected by exhaustion or coercion. Finally, the defendant did not
15 make a timely objection to the mistrial. At no time did the
16 defendant object to the court declaring a mistrial prior to the
17 filing of the instant motion. Double Jeopardy does not therefore
18 preclude retrial of the defendant, and none of the defendant's
19 arguments to the contrary persuades the court otherwise.

20 Accordingly, the defendant's motion for reconsideration of
21 retrial (ECF No. 75) is DENIED.

22 IT IS SO ORDERED.

23 DATED: This 20th day of May, 2021.

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26 UNITED STATES DISTRICT JUDGE
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